

Exhibit 2

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Dey, Inc., et al.,
Civil Action No. 05-11084-PBS

Exhibit to the July 24, 2009, Declaration of George B. Henderson, II
In Support of Plaintiffs' Motion For Partial Summary Judgment
and In Opposition To Dey's Motion For Partial Summary Judgment

Dey, L.P. and Dey, Inc. (Pamela Marrs)

May 15, 2008

Napa, CA

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE LITIGATION)

-----X Volume 1

THIS DOCUMENT RELATES TO:) MDL NO. 1456

The City of New York, et al.,) Civil Action

V.) No. 01-12257-PBS

Abbott Laboratories, et al.)

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THIS DOCUMENT RELATES TO:)

State of California, ex rel.)

Ven-A-Care v. Abbott Laboratories,))

Inc., et al., Case No.)

03-cv-11226-PBS)

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THURSDAY, MAY 15, 2008

DEPOSITION OF DEY, L.P. AND DEY, INC.

BY PAMELA MARRS

Reported By: CAROL NYGARD DROBNY, CSR No. 4018

Registered Merit Reporter

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Napa, CA

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1 IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
 2 IN AND FOR LEON COUNTY, FLORIDA

3 -----X

4 THE STATE OF FLORIDA, ex rel.)

5 VEN-A-CARE OF THE FLORIDA KEYS,)

6 INC., a Florida corporation, by)

7 and through its principal Officers)

8 and directors, ZACHARY T. BENLEY)

9 and T. MARK JONES,)

10 Plaintiffs,)

11 Vs.) Case No.

12 BOEHRINGER INGELHEIM CORPORATION,) 98-3032 A

13 et al.)

14 Defendants.)

15 -----X

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38:1 so I would assume so.

2 But prior to the Medicaid Rebate
3 Agreement coming in to place it wasn't something
4 I had any visibility to.

5 BY MR. AZORSKY:

6 Q. So it -- you do know then that Dey
7 signed Medicaid rebate agreements with the
8 Secretary of the Department of Health and Human
9 Services that allows Dey's drugs to be covered
10 under the Medicaid program; correct?

11 A. I do, yes.

12 Q. You've described for us the
13 relationship between Dey, Inc., Dey LP, Inc., and
14 Dey, LP.

15 Can you tell us what Lipha is?

16 A. Lipha actually is the way it's
17 pronounced.

18 Lipha purchased Dey in 1987 -- no --
19 1988 from a privately held group of investors.

20 Lipha is a pharmaceutical company
21 located in Leone, France. It was subsequently
22 purchased by -- at the time they bought Dey they

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39:1 were owned by Air Liqui, which is another French
2 company in 1991.

3 Lipha was then sold to Merck KGaA,
4 which is a German chemical and pharmaceutical
5 company.

6 And in that -- in that acquisition of
7 Merck buying Lipha they, obviously, inherited Dey
8 in the transaction.

9 Q. And when did that transaction with
10 Merck KGaA purchasing Lipha take place?

11 A. 1991 -- as I recall. I think it was
12 around November.

13 That's from memory. It should be close
14 to that time.

15 Q. And did there come a point in time that
16 the ownership of Dey again changed hands?

17 A. Yes. On October 2nd of 2007 Merck sold
18 Dey to a company called Mylan -- M-y-l-a-n.

19 Q. And since that acquisition has Mylan
20 kept Dey as a separate entity?

21 A. Well, from a legal structure
22 standpoint, yes.

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40:1 Is that what you mean or did you mean
2 something else?

3 Q. Well, let's start with that.

4 From a legal structure standpoint is
5 Dey considered, for instance, a wholly-owned
6 subsidiary?

7 A. Yes, it is.

8 Q. And has -- has Dey and Mylan merged any
9 aspects of its operations, for instance, its
10 sales, its marketing, or even its executive or
11 financial functions?

12 MR. DOYLE: Objection as to form.

13 THE WITNESS: Nothing has been merged.

14 There have been some integration
15 activities where there has been an attempt to
16 realize some synergies in certain areas, but
17 they've been relatively minor.

18 The only -- you know, the only thing
19 that -- I'm not sure if you -- what do you
20 consider "merged," I guess?

21 I don't consider this merged, but they
22 do represent our products with certain customers.

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41:1 Q. So certain of the marketing functions?

2 A. Sales, not marketing.

3 Q. Sales?

4 A. They have.

5 Q. Overlapped or been integrated?

6 A. Two of our Sales Reps were relieved of
7 their responsibilities, and they were
8 transitioned to Mylan about the time of the
9 acquisition. We also produce a product for them.

10 I'm not sure if this is what you're
11 asking. Maybe you could ask more specific
12 questions.

13 Q. I'd actually like to focus on the time
14 period right now before the Mylan acquisition of
15 Dey.

16 A. Okay.

17 Q. And I'd like to run through from the
18 early nineties through that acquisition by Mylan,
19 the various presidents and CEOs of Dey, so that I
20 can understand who was the titular head of the
21 company during each period.

22 A. Okay.

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42:1 Q. I understand that Jean-Pierre Termier
2 was the CEO/President of Dey at one time?

3 A. He was.

4 Q. Do you know when?

5 A. He was the President when I was hired
6 in 1989, and he went back to France in 1992.

7 Q. Before becoming -- first of all, was he
8 the President, or the CEO, or both?

9 What was his title?

10 A. I don't recall if -- I think he was
11 President and CEO, but I don't recall if it was
12 both or not.

13 Q. Okay. Before becoming President of
14 Dey, Mr. Termier was with Lipha, correct, in
15 France?

16 A. Yes, but he sort of had an interm step,
17 which was he was at a company which is now called
18 Nitrogen, then called Lipha Tech.

19 Lipha Tech was another company owned by
20 Lipha located in Milwaukee, and they sold not
21 pharmaceutical products, but inoculants and rat
22 poison, rogenicides, and he had -- he played a

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43:1 role in that company.

2 I don't know if he was officially
3 President or not. I think he was. And at the
4 same time he was serving at that company he was
5 also in the U.S. looking for an acquisition for
6 Lipha in the pharmaceutical industry.

7 Q. So in 1988 Lipha bought Dey and
8 installed Termier as its President; is that fair
9 to say?

10 A. That's true.

11 MR. DOYLE: Objection as to form.

12 THE WITNESS: He -- he was instrumental
13 in the acquisition, and then he later became
14 President when the acquisition was complete.
15 BY MR. AZORSKY:

16 Q. And then, when he retired from Dey in
17 1992, he returned to France and worked once again
18 directly for Lipha; is that correct?

19 A. He didn't retire from Dey. He went
20 back and worked for Lipha, and then he
21 subsequently retired.

22 Q. Well, he -- let me rephrase that then.

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44:1 He resigned as President of Dey and
2 returned to work with Lipha in France; is that
3 correct?

4 A. I don't know if I'd use the word
5 "resigned."

6 You know, his -- his tour of duty was -
7 - I don't know the exact circumstances.

8 I know that, you know, he went back and
9 worked with Lipha. I don't know the
10 circumstances.

11 Q. Well, at the time he went back to work
12 for Lipha someone else became President and CEO
13 of Dey; right?

14 A. That's correct.

15 Q. And that was Charles Rice?

16 A. That's correct.

17 Q. And before that, during Termier's
18 presidency, Mr. Rice held what position?

19 A. He held various roles.

20 Just right before Jean-Pierre left
21 Charles was, I believe, Chief Operating Officer
22 and prior to that VP of -- I don't know if it was

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45:1 called Operations or exactly what the title was,
2 but it was an operational role.

3 When he began his career with Dey, I
4 believe he was VP of Quality, and I -- you know,
5 I don't know all of his different positions over
6 time.

7 But he came in specializing in Quality,
8 broadened his job to include Operations and
9 Manufacturing and Engineering Departments, and
10 then eventually became COO prior to CEO.

11 His tenure as COO was relatively short.
12 It was -- you know, it was a planned replacement
13 for Jean-Pierre when he was promoted to Chief
14 Operating Officer, as I recall.

15 Q. What were Mr. Rice's responsibilities
16 or duties as Chief Operating Officer?

17 A. He was -- responsible for quality,
18 engineering, manufacturing.

19 I believe at that time he was also
20 given responsibility for R&D.

21 I don't recall if he had sales and
22 marketing at the time or not. We'd have to

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130:1 be reported to the pricing compendia at the time
2 a generic product was launched, it was Dey's
3 practice to set AWP at or near 10 percent below
4 the brand AWP; is that correct?

5 A. It's my understanding that that was the
6 guidance that was given to us by First DataBank.
7 Ed Edelstein had a conversation or maybe it was a
8 memo, I don't recall which, with Bob Mozak, and
9 that was the guidance that was given in terms of
10 how to establish an AWP for a generic product at
11 launch.

12 Q. Do you know exactly what Mr. Edelstein
13 said to anyone at Dey in that regard?

14 MR. DOYLE: Objection as to form.

15 THE WITNESS: I don't know exactly.

16 I've seen it -- I've heard it referred
17 to with Bob when he was at Dey.

18 I've seen it referred to in a
19 deposition, but -- I didn't personally have the
20 conversation or see the document, if there was
21 one, issued by First DataBank.

22 BY MR. AZORSKY:

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131:1 Q. And you were --

2 A. That's always been my understanding
3 from -- from what Bob said back in the days when
4 he actually was still working at Dey.

5 Q. And you weren't personally present
6 during that conversation; correct?

7 A. I was not personally present.

8 Q. My question was, though, whether it was
9 Dey's practice to set AWP at the time of the
10 launch of a generic product at or near 10 percent
11 below the brand AWP.

12 A. It's my understanding that based on the
13 advice from First DataBank that's how we
14 established the AWP on launch.

15 Q. Well, regardless of whether it was on
16 advice from anyone, is that, in fact, what Dey
17 did, it set AWP at approximately at or about 10
18 percent below the brand AWP?

19 A. It's my general understanding.

20 I'd have to go back and actually do the
21 calculations to make sure that that is correct
22 and it wasn't 12, or 13, or 15 percent, but

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132:1 throughout my time in preparing for various
2 depositions that's what I've always been told by
3 -- Bob specifically, but, you know, I've heard it
4 from other people as well.

5 Q. And has it historically been typically
6 the case that Dey does not change the AWP once
7 it's been set at the time of launch of a new
8 product?

9 A. For generic products, that's correct.

10 It's, again, my understanding that
11 that's an industry practice, that AWP is not
12 changed.

13 For the brands the AWP does change over
14 time as price increases are implemented for the
15 brand products, because with brand products
16 prices tend to go up, not down.

17 The AWP is raised a corresponding
18 amount.

19 Q. And when you say "it's industry
20 practice," what -- what source are you drawing
21 upon to understand the industry practice with
22 respect to setting or changing AWP?

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133:1 A. Again, I'm just going back to
2 conversations with internal people that, you
3 know, that was our understanding of what was
4 expected in the -- in the industry.

5 Q. Okay.

6 A. And, in fact, we had a situation once
7 where First DataBank actually lowered our AWP and
8 customers called and complained and basically
9 threatened not to buy our product.

10 Q. So the way it works is that Dey
11 determines a suggested AWP before the launch of a
12 new product; correct?

13 A. Dey reports a -- an AWP for a product
14 before it's launched to the reporting services,
15 yes.

16 Q. And the reporting services publish the
17 AWPs that are reported to it by Dey; correct?

18 MR. DOYLE: Objection. Objection as to
19 form.

20 THE WITNESS: And let me make one
21 correction.

22 We actually recently have stopped